IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

CENTRAL EXCISE APPEAL NO.223 OF 2006

The Commissioner of C. Excise .. Appellant.

Versus

M/s.Indian Petrochemicals
Corporation Limited .. Respondent.

Mr.A.S. Rao with Ms.Anamika Malhotra for the appellant.

Mr.Prakash Shah i/by PDS Legal for the respondent.

CORAM : F.I. REBELLO &
D.B. BHOSALE, JJ.

DATED : 17TH AUGUST, 2007.

P.C. :

1. The question of law as framed was as under; "whether an assessee can avail modvat/cenvat credit on capital goods namely spares and stores, the value of which had been written off in the books of accounts and which were obsolete and not put to use during the relevant period ?" and "whether an assessee can claim cenvat credit on capital goods the value wheeof has been written off in its books of account ?"

2. We find from the order of the Commissioner dated 24-12-2004 that it was the contention of the respondent that there is no prescribed time limit for using the capital goods under the cenvat rules

and hence credit cannot be denied for goods lying unutilized. In other words, it is clear that this is a case of goods which are not obsolete but goods which are lying unutilized and which can be utilized. The Tribunal in a long line of judgments where goods have been shown as written off in the books, have taken a view that the benefit is available. Those judgments have been accepted.

3. Considering the above, in our opinion, the question of law as framed in the appeal would not arise.

4. With the aforesaid observations, the appeal dismissed. There shall be no order as to costs.

(D.B. BHOSALE, J.) (F.I. REBELLO, J.)